

EXHIBIT C

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Lina Khan, Chair**
 Rebecca Slaughter
 Alvaro Bedoya
 Melissa Holyoak
 Andrew Ferguson

In the Matter of

The Kroger Company

and

Albertsons Companies, Inc.

Docket No. 9428

**EXPEDITED TREATMENT
REQUESTED**

JOINT MOTION TO DISMISS THE COMPLAINT

Complaint Counsel and Respondents The Kroger Company (“Kroger”) and Albertsons Companies, Inc. (together with Complaint Counsel and Kroger, the “Parties”) jointly move to dismiss the complaint in the above-captioned matter. On December 13, 2024, Respondents’ counsel informed Complaint Counsel that Respondents have each terminated the proposed acquisition. As set forth in Exhibits A and B, Respondents have both withdrawn their Hart-Scott-Rodino Notification and Report Forms filed for the proposed acquisition at issue in the complaint and have no intent to refile. The Parties therefore respectfully request that the Commission dismiss the complaint because it is now moot.

The Parties also respectfully request the Commission’s expedited treatment of this motion, for two reasons. First, the evidentiary hearing in this matter is scheduled to begin 21 days after the final resolution of the related federal preliminary injunction proceeding in the U.S. District Court for the District of Oregon captioned *Federal Trade Commission, et al. v. Kroger Company and Albertsons Companies*, No. 3:24-cv-00347-AN (D. Or.). On

December 10, 2024, the Oregon court granted Complaint Counsel’s preliminary injunction motion to block Respondents’ proposed merger, and since that ruling Respondents have each terminated the underlying merger agreement. The Commission’s prompt action to dismiss the complaint and resolve this matter would thus conserve the Commission’s limited adjudicatory resources and help the Parties avoid unnecessary litigation expenses in this forum.

Second, Kroger has filed a constitutional challenge to the Commission’s administrative proceeding in U.S. District Court for the Southern District of Ohio captioned *The Kroger Company v. Federal Trade Commission*, No. 1:24-cv-00438-DRC (S.D. Ohio), in which Kroger seeks to preliminarily enjoin this administrative proceeding before it resumes. During a recent hearing, the Ohio court requested a prompt update after the Oregon court issued its ruling on Complaint Counsel’s preliminary injunction motion. As shown in Exhibit C, on December 11, 2024, the Commission filed a notice in the Ohio court informing it of the Oregon court’s ruling and stating that the Commission “expect[s] to submit a status report jointly with Plaintiffs by December 17, 2024, regarding next steps in this case.” Therefore, the Commission’s prompt action to dismiss the complaint and resolve this matter would likewise free the Ohio court to dismiss the case it is adjudicating as moot, and thereby conserve its judicial resources and help the Parties avoid unnecessary litigation expenses in that forum.

The Parties therefore respectfully request that the Commission dismiss the complaint on an expedited basis. A proposed order is attached.

Dated: December 16, 2024

Respectfully submitted,

s/ Barrett J. Anderson
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Counsel for Albertsons Companies, Inc.

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Lina Khan, Chair**
Rebecca Slaughter
Alvaro Bedoya
Melissa Holyoak
Andrew Ferguson

In the Matter of

The Kroger Company

and

Albertsons Companies, Inc.

Docket No. 9428

[PROPOSED] ORDER TO DISMISS COMPLAINT

This matter comes before the Commission on Complaint Counsel's and Respondents' Joint Motion to Dismiss Complaint. Having considered the motion, it is hereby **ORDERED**:

The Joint Motion to Dismiss the Compliant, dated December 16, 2024, is **GRANTED** and the complaint is **DISMISSED** without prejudice.

By the Commission.

ORDERED:

April Tabor
Secretary

Date: _____

Exhibit A

**Debevoise
& Plimpton**

Debevoise & Plimpton LLP
801 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
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December 13, 2024

Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Constitution Center Building
400 7th St., S.W., 5th Floor, Room 5301
Washington, D.C. 20024
(premerger@ftc.gov)

Department of Justice
Antitrust Division
Premerger and Division Statistics Unit
450 Fifth Street, N.W.
Suite 1100
Washington, DC 20530-0001
(premerger@usdoj.gov)

Premerger Notification and Report Form: Acquired Person

Transaction File No. 231-0004

Acquisition by The Kroger Company of Albertsons Companies, Inc.

Dear Sir or Madam:

Please be advised that our client, Albertsons Companies, Inc., hereby withdraws the above-referenced Notification and Report Form pursuant to 16 C.F.R. § 803.12, effective December 12, 2024.

Please contact me at (202) 383-8135 if I can be of any assistance.

Sincerely,



Edward D. Hassi

Exhibit B

Arnold & Porter

Michael B. Bernstein
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Michael.B.Bernstein@arnoldporter.com

CONFIDENTIAL

December 13, 2024

VIA EMAIL

Permerger Notification Office
Bureau of Competition
Federal Trade Commission
Constitution Center Building
400 7th St., S.W., 5th Floor, Room 5301
Washington, D.C. 20024
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Department of Justice
Antitrust Division
Premerger and Division Statistics Unit
450 Fifth Street, N.W.
Suite 1100
Washington, DC 20530-0001
(premerger@usdoj.gov)

Re: Transaction File No. 231-0004 – Acquisition by The Kroger Co. of
Albertsons Companies, Inc.

Dear Sir or Madam:

Please be advised that our client, The Kroger Co., hereby withdraws the above-referenced Notification and Report Form pursuant to 16 C.F.R. § 803.12, effective December 12, 2024.

Please contact me at (202) 942-5227 if you have any questions.

Sincerely



Michael B. Bernstein

Exhibit C

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
CINCINNATI DIVISION**

THE KROGER CO.,

Plaintiff,

v.

THE FEDERAL TRADE COMMISSION, *et al.*,

Defendants.

No. 1:24-cv-00438-DRC
Hon. Douglas R. Cole

**NOTICE OF OREGON DISTRICT COURT DECISION
AND WASHINGTON STATE COURT DECISION**

Defendants respectfully provide the Court with notice of the Oregon district court's December 10, 2024 decision preliminarily enjoining The Kroger Company ("Kroger") and Albertsons Companies, Inc. ("Albertsons") from consummating the proposed merger pending the outcome of the administrative proceedings before the Federal Trade Commission ("FTC"). *See* Opinion & Order, *FTC v. The Kroger Co.*, No. 3:24-cv-00347-AN (D. Or. Dec. 10, 2024), ECF No. 521 at 71 (attached as Exhibit A).

Defendants also provide the Court with notice of the Washington state court's December 10, 2024 decision permanently enjoining Kroger and Albertsons from consummating the proposed merger. *See* Findings of Fact and Conclusions of Law, *Washington v. The Kroger Co.*, No. 24-2-00977-9 (King Cty. Sup. Ct. Dec. 10, 2024) at 121 (attached as Exhibit B).

Defendants expect to submit a status report jointly with Plaintiffs by December 17, 2024, regarding next steps in this case.

Dated: December 11, 2024

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General
Civil Division

BRIAN D. NETTER
Deputy Assistant Attorney General

CHRISTOPHER R. HALL
Assistant Branch Director

/s/ Cassandra M. Snyder _____
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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2024, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

April Tabor
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The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
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Washington, DC 20580

I also certify that I caused the foregoing document to be served via email to as of December 16, 2024:

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Counsel Supporting the Complaint